

LIFE LINES: DOCUMENTS TO PROTECT
YOU AND YOUR FAMILY
IN TIMES OF TROUBLE



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Introduction

This packet contains information and sample forms regarding essential estate planning documents that everyone should have in place. Although these issues may be difficult to talk about, it is important for all people -- and particularly lesbian, gay, bisexual, and transgender people -- to consider what should happen if they become seriously ill or incapacitated, and to put in place documents reflecting these wishes. Without such documents in place, your partner could be excluded from visiting you in the hospital and could have no say in medical decisions regarding your care. If your partner dies, as hard as that may be to allow yourself to imagine, you may have no say over her or his burial or cremation, you may lose all the belongings you acquired together, you may lose the home you've shared for years.

The good news is it doesn't have to be that way. By filling out some simple documents, you and your partner can prevent much of this devastation. The NCLR Essential Documents packet provides basic information about these documents -- including wills and trusts, documents protecting choices of medical care, autopsy and disposition of remains, hospital visitation authorization, durable power of attorney for finances, authorization for consent to medical treatment of a minor, and nomination of guardian for a minor -- as well as sample forms.

One day in the not too distant future we may live in a country that accords our relationships full legal protection and recognition. Until that day arrives we must protect ourselves from the ravages of homophobia and a legal system that too often ignores who we are to each other.

I. Wills & Trusts

A. Wills

A will is a legal document that allows you to designate who will receive your property when you die, and how and when they will receive it. If you die without a will, your property will be distributed to your legal heirs. This is called intestate succession. With the exception of three states, a same-sex partner is NOT considered to be a legal heir and therefore is not legally entitled to inherit your property if you die without a will. This is true regardless of how long you have been with your partner and regardless of your relationship with your blood relatives.

The three states in which same-sex partners do have intestacy rights are California, Hawaii, and Vermont. In California, a registered domestic partner is entitled to inherit if the other partner dies without a will. In Vermont, the same is true for spouses in a civil union, and in Hawaii the same is true for reciprocal beneficiaries. It is important to note, however, that in these three states, if you die without a will, the percent of your property that will go to your domestic partner/civil union partner/reciprocal beneficiary will depend on whether you have other living heirs when you die and if so, how many. Thus,

even in a state in which your partner has intestacy rights, you need to draft a will and/or prepare a trust to control what and how much your partner will receive after your death.

In addition to allowing you to determine who will get your property, a will also allows you to say who you want to supervise the distribution of your assets. You can also include preferences in your will about funeral arrangements, disposition of your remains, and who will be in charge of your funeral or memorial service. Finally, if you have children, you can include a provision in your will nominating a guardian to care for your children after your death. A court is not bound to honor a nomination of guardianship but, in the absence of any challenge, they are often respected.

B. Trusts

Another way to designate who will receive your property upon your death is through a revocable living trust. A living trust is similar to a will in that it allows you to say who should get what; it differs from a will in that property left by a will must go through the court probate process – which means that the will must be proven valid, and the person's debts are paid before the property is distributed. The probate process often takes about a year. With a living trust, this process is avoided and the property goes directly to the people you have named in the trust. In some circumstances, transferring the property through a living trust rather than a will also helps reduce or avoid some estate taxes.

A revocable living trust permits you to transfer your ownership of your assets to the trust, while still maintaining control over those assets during your lifetime. Although the trust is technically the owner of the property, you maintain management and control of the property as the trustee.

There are some drawbacks to using a living trust and, depending on the type of assets you have, the costs may outweigh the benefits, so you should consult an estate planning attorney before making a decision about whether a revocable living trust makes sense for you. In addition, you should be very cautious about using pre-printed trust forms, as opposed to having an attorney draft a trust document for you.

C. Resources

Sample will forms can be purchased at stationery stores, and Nolo Press also has a number of do-it-yourself books related to wills and estate planning, including:

- Nolo's Simple Will Book, by Attorney Denis Clifford, provides explanatory information, as well as forms you can fill out on your computer.
- Quick & Legal Will Book, by Attorney Denis Clifford, provides sample wills and instructions for typing your own basic will.
- Plan Your Estate, by Attorneys Denis Clifford & Cora Jordan is an overview of wills, trusts, estate taxes, and health care and financial directives.

- Estate Planning Basics, by Attorney Denis Clifford is an overview of the fundamentals of estate planning – wills, trusts, estate taxes, and financial and health care directives.
- Make Your Own Living Trust, by Attorney Denis Clifford explains how to create a living trust, transfer property to the trust and amend or revoke the trust at any time.

If you have a large estate or desire extensive estate planning, you should consult with an attorney in your area. **In addition, if you use one of the resources listed above or another resource to draft your own will or living trust, you should ALWAYS have a qualified attorney review your documents to make sure they comply with the legal requirements in your state and accurately reflect your intentions.**

II. Documents Protecting Choices of Medical Care

In the event you are seriously injured or incapacitated, you may be unable to make medical decisions about your care. In most states, in the absence of written directions, health care professionals will turn to your blood relatives to make these decisions in the event you are unable to make them for yourself. This is true no matter how long you may have been with your partner and regardless of whether you have a good relationship or even any relationship with your blood relatives.

A. Living Will/Medical Directive

In every state, you can execute a document describing your wishes concerning life-prolonging medical care. Depending upon the state, the document may be called by any one of several different names, including: living will, medical directive, health care directive, directive to physicians, or declaration regarding health care. This document is your directive to health care professionals about what measures you want them to take when you are no longer capable of communicating your choices regarding life-prolonging and other medical care.

B. Durable Power of Attorney for Health Care/Health Care Proxy

A durable power of attorney for health care (which is also sometimes called a “health care proxy”) empowers another person to make medical decisions about your care in the event you become unable to make these decisions for yourself.

Even when you have specified your wishes in a living will/medical directive, there may be some decisions for which the health care providers need additional information to decide what action to take. In the absence of such a durable power of attorney for health care, the health care officials will turn to your blood relatives to make these decisions.

In most states you can use a durable power of attorney for health care/health care proxy to appoint someone you trust to make medical decisions for you. In some states, the

living will, medical directive, and durable power of attorney for health care/health care proxy are included on the same form.

C. Where to Obtain Your State's Forms

States have different requirements for these documents. **You must use a form that complies with the law in your state.**

You can download state specific forms at www.partnershipforcaring.org. You can also obtain health care directive forms at large hospitals or from your state medical association. In addition, Nolo Press' WillMaker computer program includes state-specific medical directive forms.

D. Once You Have Completed the Forms

Once you have completed the form as directed, you should make sure to keep a copy of your directive for yourself and give copies to:

- Your partner;
- Any physician with whom you now consult regularly;
- Any person named as a health care proxy;
- Officials at the hospital or other care facility in which you are likely to receive treatment; and
- Any other people or institutions who think it is wise to inform about your medical intentions.

III. Autopsy and Disposition of Remains

In the absence of written instructions, nearly every state gives your blood relatives the right to control the disposition of your body, including funeral arrangements, upon your death. The only current exception is for civil union spouses in Vermont, who have the same right to control the disposition of remains as does a married surviving spouse.

Written instructions let you express your wishes regarding these issues and name the person you would like to carry them out. In most states, these instructions are legally binding.

Even if you live in Vermont and are in a civil union, it is advisable to leave written instructions in case something happens to you in another state that may or may not recognize your relationship with your partner.

Some durable power of attorney for health care forms authorize the named agent to make these decisions regarding autopsy and disposition of remains, so check your form to see if this is already taken care of.

A sample autopsy and disposition of remains authorization can be found at Appendix A.

IV. Hospital Visitation Authorization

A hospital visitation authorization allows you to name individuals who are not related by blood or marriage who you would like to be able to visit you in the hospital, in the event you are no longer able to communicate this yourself.

While registered domestic partners in California, persons in a reciprocal beneficiary relationship in Hawaii, and persons in a civil union in Vermont have the right to visit each other while one is in the hospital, we encourage even those individuals to complete a hospital visitation authorization in the event that one or both of them are in a hospital in another state. In addition, you should carry a copy of your hospital visitation authorization with you at all times.

A sample hospital visitation authorization can be found at Appendix B.

V. Durable Power of Attorney for Finances

A durable power of attorney for finances allows you to designate a person, your “agent,” to take care of your finances if you are unable to do so yourself. A general power of attorney for finances authorizes your designated agent to control a broad range of financial matters, including paying your bills, cashing your checks, or receiving benefits.

Alternatively, you can limit the powers of your agent, in a limited power of attorney for finances, to a specific timeframe, or to specific functions.

Executing a general or limited power of attorney for finances can save the expense and difficulty of a conservatorship or guardianship proceeding, or can prevent intervention by blood relatives in one’s financial affairs, in the case of incapacity.

The designation of power of attorney should not be taken lightly, however. By designating a person to be your agent, you are giving your agent very broad rights to handle your finances, including the ability to empty your bank account. Your agent should be someone who not only knows how to handle money, but also someone you trust, without reservation.

You should provide copies of your Durable Power of Attorney for Finances to your bank and other financial institutions. Some institutions require you to use their own form, so you should check with your bank and other institutions to determine if this is the case.

A sample durable power of attorney for finances can be found at Appendix C.

VI. Authorization for Consent to Medical Treatment of Minor

An authorization for consent to medical treatment of a minor allows someone other than a child's legal parents to authorize a doctor or other health care professional to provide medical services to your minor child. Especially in states that do not recognize both parents in a same-sex couple as legal parents, this form can be important to ensure that your partner is able to consent to emergency medical treatment for your child if you are not available. Even if both you and your partner are recognized as legal parents, it is advisable to execute this document in case you are traveling in a state that refuses to recognize your relationship or parental status.

For lesbian couples who are about to have children, it is very important to complete this document before the birth mother goes into the hospital. While this form may not be legally binding, hospitals will usually honor the authorization.

A sample authorization for consent to medical treatment of a minor can be found at Appendix D.

VII. Nomination of Guardian for a Minor

A nomination of a guardian or conservator assigns the care and custody of a child to another responsible adult in the event that the child's legal parent dies or becomes physically or psychologically unable to care for the child. Usually, a person who is appointed to be the child's guardian is given physical custody of the child and authority to manage the child's financial matters.

While a nomination is not legally binding, most courts will give great deference to a clear nomination of guardianship in cases where there is no other legally recognized parent.

Because the required format of these documents varies significantly from state to state, you are strongly urged to have the nomination drafted by an attorney who is aware of the requirements in your state.

A sample nomination of guardian for a minor can be found at Appendix E.

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APPENDIX A

AUTOPSY AND DISPOSITION OF REMAINS

AUTOPSY AND DISPOSITION OF MY REMAINS

I, _____, hereby nominate _____ to be my agent for purposes of directing an autopsy and controlling the disposition of my remains.

I understand that my agent will be able to authorize an autopsy (an examination of my body after my death to determine the cause of my death) and to direct the disposition of my remains unless I limit that authority in this document. I also understand that my agent or any other person who directed the disposition of my remains must follow any instructions I have given in a written contract for funeral services, my will or by some other method.

(Directions: If any of the statements below reflect your desires, sign next to that statement. If none of these statements reflect your desires and you want to limit the authority of your agent to consent to an autopsy and/or to dispose of your remains, you should write your own statement. Under some circumstances, the law may require that autopsy be performed even if you have refused to authorize your agent to consent to one.)

AUTOPSY

(_____) I hereby consent to an examination of my body after my death to determine the cause of my death.

(_____) My agent may not authorize an autopsy.

DISPOSITION OF REMAINS

(_____) I prefer that my agent direct the disposition of my remains by the following method (check one):

Burial _ Cremation _

(_____) My agent may not direct the disposition of my remains and I would prefer that

(name and address)

direct the disposition of my remains.

(_____) I have prescribed the way I want my remains disposed of in (check one):

_ A written contract for funeral services with

(name of mortuary/cemetery)

_ My will

☐ Other: _____

PRIOR DESIGNATIONS REVOKED

(_____)

I revoke any prior durable power of attorney for health care, designations made in regards to autopsy and/or disposition of my remains.

Executed this _____ day of _____, 20_____, at _____

Signature of Principal

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

State of _____)

) SS.

County of _____)

On _____ before me, _____, personally
(Date) (Notary)

appeared _____
Signer(s)

_ Personally known to me - OR - _

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary's Signature

IMPORTANT NOTE: This sample legal document is provided for informational purposes only and may or may not be valid in your state. This sample legal document also may not include the particular provisions you need. We strongly recommend you consult a competent family or estate planning attorney who is familiar with these issues. This sample document in no way constitutes, and should not be relied upon, as legal advice.

APPENDIX B

HOSPITAL VISITATION AUTHORIZATION

HOSPITAL VISITATION AUTHORIZATION

I, _____, a resident of _____
County, State of _____, do hereby give notice and authorize that, if any
injury or illness, or any incapacity through any other cause necessitates my
hospitalization or treatment in a medical facility, it is my wish that
_____ be given first preference in being admitted to
visit me in such facility, whether or not there are parties related to me by blood or by law
or other parties desiring to visit me, unless and until I freely give contrary instructions to
competent medical personnel on the premises involved.

Executed this _____ day of _____, 20____,

at

Signature of Principal

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

State of _____)
) SS.

County of _____)

On _____ before me, _____, personally
(Date) (Notary)

appeared _____
Signer(s)

_____ Personally known to me - OR - _____ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the

same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary's Signature

IMPORTANT NOTE: This sample legal document is provided for informational purposes only and may or may not be valid in your state. This sample legal document also may not include the particular provisions you need. We strongly recommend you consult a competent family or estate planning attorney who is familiar with these issues. This sample document in no way constitutes, and should not be relied upon, as legal advice.

APPENDIX C

DURABLE POWER OF ATTORNEY FOR FINANCES

DURABLE POWER OF ATTORNEY FOR FINANCES

Recording requested by and when recorded mail to:

Warning to Person Executing This Document

This is an important document. It creates a durable power of attorney. Before executing this document, you should know these facts:

- 1. This document may provide the person you designate as your attorney in fact with broad powers to dispose, sell, convey and encumber your real and personal property.**
- 2. These powers will exist for an indefinite period of time unless you limit their duration in this document. These powers will continue to exist notwithstanding your subsequent disability or incapacity.**
- 3. You have the right to revoke or terminate this durable power of attorney at any time.**

DURABLE POWER OF ATTORNEY

1. Creation of Durable Power of Attorney

By signing this document, I, _____, intend to create a durable power of attorney. This durable power of attorney shall not be affected by my subsequent disability or incapacity, and shall remain effective until my death, or until revoked by me in writing.

2. Effective Date

This durable power of attorney shall become effective only in the event that I become incapacitated or disabled so that I am not able to handle my own financial affairs and decisions. That determination shall be made in writing by a licensed physician and the writing shall be attached to this durable power of attorney.

3. Designation of Attorney in Fact

I, _____, hereby appoint
_____, as my attorney in fact, to act for me in my name
and for my use and benefit. Should _____ for any
reason fail to serve or cease to serve as my attorney in fact, I appoint
_____ of _____ to be my
attorney in fact.

4. Authority of Attorney in Fact

I grant my attorney in fact full power and authority over all my property real and personal, and
authorize _____ to do and perform all and every act which I as owner of that
property could do or perform and hereby ratify and confirm that all that my attorney in fact shall
do or cause to be done under the Durable Power of Attorney.

[**Special Provisions or Limitations.** Add to this section any specific limitation(s), restriction(s),
direction(s), etc. you want.]

5. Reliance by Third Parties

The powers conferred on my attorney in fact by this durable power of attorney may be
exercisable by my attorney in fact alone, and my attorney in fact's signature or act under the
authority granted in this durable power of attorney may be accepted by any third person or
organization as fully authorized by me and with the same force and effect as if I were personally
present, competent and acting on my own behalf.

No person or organization who relies on this durable power of attorney or any representation my
attorney in fact makes regarding [his/her] authority, including but not limited to:

- (i) the fact that this durable power of attorney has not been revoked;
- (ii) that I, _____, was competent to execute this
power of attorney;
- (iii) the authority of my attorney in fact under this durable power of attorney,

Signed on _____ at _____, _____

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

On _____ before me, _____, personally
(Date) (Notary)

_____ Personally known to me - OR - _____ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Notary's Signature

Durable Power of Attorney for Finances
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APPENDIX D

AUTHORIZATION FOR CONSENT TO MEDICAL TREATMENT OF MINOR

I, _____ being the parent entitled to the legal and physical custody of my minor child _____, born _____, do hereby authorize _____, into whose care the child has been entrusted, to consent to any X-ray examination, anesthetic, medical, or surgical diagnosis or treatment and hospital care to be rendered to said child under the supervision and upon the advice of a physician or other medical care provider licensed to practice medicine in any state in the United States. I further authorize _____, to consent to any X-ray, examination, dental, or surgical diagnosis or treatment and hospital care to be rendered to said minor child by a dentist licensed to practice dentistry in any state in the United States.

Executed this _____ day of _____, 20____,
at _____.

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

_____ Personally known to me - OR - _____ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the

same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary's Signature

IMPORTANT NOTE: This sample legal document is provided for informational purposes only and may or may not be valid in your state. This sample legal document also may not include the particular provisions you need. We strongly recommend you consult a competent family or estate planning attorney who is familiar with these issues. This sample document in no way constitutes, and should not be relied upon, as legal advice.

APPENDIX E

NOMINATION OF GUARDIAN FOR A MINOR

NOMINATION OF GUARDIAN FOR A MINOR

I, _____, the legal parent of the minor child
_____ who was born on _____, am
hereby declaring my wishes as to those individuals to be appointed the legal guardian of
the person and property of my (daughter/son) in the event I am unable, physically or
mentally, to care for my child.

I.

I nominate _____, currently residing at
_____ (home address) to be the legal
guardian of the person and property of my minor child
_____ (child's name). This nomination is based on the
fact that a loving and parental relationship exists between
_____ and my (daughter/son), _____
_____. Furthermore, my (daughter/son) has lived with this adult and looks to
her for guidance, support, and affection. It would be detrimental to my (daughter/son) to
deprive (her/him) of this established relationship at a time when I am unable to provide
the security and care necessary to my child's healthy development.

II.

In the event _____ is unable to serve as a guardian or is
disqualified by a court of law from serving; I nominate
(_____) to serve as the guardian of the person and property
of the minor child _____ (name).

III.

Both the identity and whereabouts of the minor child's natural father are unknown to me.

or

The minor child was conceived through alternative insemination by donor and has no natural father.

or

The minor child was conceived through alternative insemination by donor, and said donor has waived, in writing, any and all rights he may have to object to my nomination of a guardian.

IV.

I have purposefully not nominated my parents or siblings to be the guardians of my child in the event of my disability because they lack an established, close and warm relationship with my child, and I believe it would be detrimental to

_____ to remove (him/her) from _____

(Child's name)

and place (her/him) with adults who are, for all practical purposes strangers.

Executed this _____ day of _____, 20 _____, at _____

.

Signature of Principal

State of _____)
) SS.
County of _____)

(Date)

(Notary)

_____ Personally known to me - OR - _____ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary's Signature

Nomination of Guardian for a Minor
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